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September 17,2002 18 66 9 40

TN REGULATORY AUTHORITY
DOCKET ROOM

Honorable Sara Kyle Chairman Tennessee Regulatory Authority 460 James Robertson Parkway Nashville, TN 37243-0505

Re:

Petition of US LEC Tennessee, Inc. for Declaratory Order

Docket No. 02-00890

Dear Chairman Kyle:

Enclosed for filing are the original and fourteen copies of *Amendments to the Petition for Declaratory Order* filed in the above-captioned proceeding.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

Henry Walke

HW/nl c: Parties

BEFORE THE TENNESSEE REGULATORY AUTHORITY NASHVILLE, TENNESSEE

| N RE: PETITION OF US LEC |) | |
|---------------------------------|---|---------------------|
| ΓENNESSEE, INC. FOR DECLARATORY |) | |
| ORDER |) | DOCKET NO. 02-00890 |
| |) | |

AMENDMENTS TO THE PETITION FOR DECLARATORY ORDER

US LEC of Tennessee, Inc. ("US LEC") moves to amend the above-captioned Petition for Declaratory Order as follows:

Paragraphs no. 7 and 11 are deleted and the following paragraphs substituted instead:

- 7. US LEC began providing service to Airstream on June 10, 2002. To complete international calls, US LEC partners with a major international carrier which actually carries the call to Europe. On July 17, 2002, US LEC was contacted by the fraud division of that carrier and was informed by them of the unusual nature of the traffic coming from Airstream. Contrary to normal traffic patterns and the representation of Airstream, approximately 99.1% of all international calls coming from Airstream were being made to wireless telephones, mostly in Germany and in the United Kingdom. The majority of the calls from Airstream were recorded as being thirty second calls which is the minimum billing period.¹
- 11. After service was terminated, Airstream filed suit against US LEC in the Chancery Court of Shelby County, Tennessee. *Airstream Wireless Services v. US LEC of Tennessee, Inc.*, Docket No.CH-02-1441-3. On July 30, 2002, the day the suit was filed,

A call of any duration less than thirty seconds is recorded as a thirty second call.

Airstream obtained an *ex parte* temporary restraining order directing US LEC to resume service to Airstream. US LEC did not restore service but filed an "Emergency Motion to Dissolve Temporary Restraining Order and to Dismiss." US LEC argued, *inter alia*, that the Tennessee Regulatory Authority, not the Court, has original jurisdiction over this dispute and that, based on US LEC's tariff and the TRA's rules, US LEC properly terminated service to Airstream. The temporary restraining order has now expired. Airstream is no longer asking for the resumption of service but is pursuing a suit for damages against US LEC for the discontinuance of service and has also asked the Court to hold US LEC in contempt for US LEC's failure to resume service when the temporary restraining order was issued. These matters were heard before the Court on August 27, 2002. At that time, both US LEC and Airstream jointly requested that the Court stay all further proceedings in the lawsuit until the Authority had ruled on the issues presented in this Petition. The Court agreed to the parties' request.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

Rv.

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Counsel for US LEC of Tennessee

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 17^{12} day of September, 2002.

Clint Simpson, Esq. Baker, Donelson, Bearman & Caldwell 165 Madison Ave., Suite 2000 Memphis, TN 38103

Henry Walker

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